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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CARLOS VILA,

Plaintiff,

v.

OUTKICK MEDIA LLC,

Defendant.

Case No:

**COMPLAINT FOR:**

**(1) Copyright Infringement  
under 17 U.S.C §501**

**(2) Violation of the Digital  
Millennium Copyright Act,  
17 U.S.C. §1202(b)**

**DEMAND FOR JURY TRIAL**

Plaintiff CARLOS VILA (“*Plaintiff*”), by and through his undersigned counsel, for his Complaint against defendant OUTKICK MEDIA LLC (“*Defendant*”) states and alleges as follows:

**INTRODUCTION**

1. This action seeks to recover damages for copyright Infringements under the Copyright Act, 17 U.S.C. § 501 and for violation of the Digital Millennium Copyright Act (“*DMCA*”), 17 U.S.C. §§ 1202 (a) & (b).

2. Plaintiff created a series of photographs in which Plaintiff owns the rights and licenses for various uses including online and print publications.

3. Defendant is a media company which owns and operates a website at domain www.outkick.com (the “Website”).

4. Defendant, without permission or authorization from Plaintiff, actively copied and/or displayed the Photograph on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

### **PARTIES**

5. Plaintiff Carlos Vila is an individual who is a citizen of the State of New York and maintains a principal place of business in Kings County, New York.

6. Upon information and belief, defendant Outkick Media LLC, is a Tennessee Limited Liability Company with a principal place of business in Los Angeles County, California at 10201 W Pico Blvd, Los Angeles, California 90035.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over the federal copyright Infringements claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over Defendant because it maintains its principal place of business in California.

9. Venue is proper under 28 U.S.C. §1391(b)(2) because Defendant does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

### **FACTS COMMON TO ALL CLAIMS**

#### **A. Plaintiff's Copyright Ownership**

10. Plaintiff is a professional photographer by trade who is the legal and rightful owner of certain photographs.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the

1 United States Copyright Office (the “USCO”) which cover many of Plaintiff’s  
2 photographs while many others are the subject of pending copyright applications.

3 13. Plaintiff’s photographs are original, creative works in which Plaintiff  
4 owns protectable copyright interests.

5 14. Plaintiff’s photographs are distributed through The Image Direct, a  
6 third-party photo agency.

7 15. On January 8, 2023, Plaintiff created a photograph of Emily  
8 Ratajkowski and Eric Andre (“*Photograph 1*”). A copy of Photograph 1 is attached  
9 hereto as part of Exhibit 1.

10 16. On January 9, 2023, The Image Direct, on behalf of Plaintiff,  
11 commercially licensed Photograph 1 to Daily Mail for the purpose of display on an  
12 online article titled “EXCLUSIVE: Go girl! Emily Ratajkowski continues her dating  
13 hot streak with comedian Eric Andre on intimate night out... after romancing Pete  
14 Davidson, Jack Greer, and DJ Orazio Rispo.”

15 17. In creating Photograph 1, Plaintiff personally selected the subject  
16 matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used  
17 to capture the image.

18 18. On April 7, 2023, Photograph 1 was registered by the USCO under  
19 Registration No. VA 2-347-193.

20 19. Plaintiff created Photograph 1 for celebrity gossip and news reporting  
21 purposes with the intention of it being used commercially.

22 20. On January 8, 2023, Plaintiff created another photograph of Emily  
23 Ratajkowski and Eric Andre (“*Photograph 2*”). A copy of Photograph 2 is attached  
24 hereto as part of Exhibit 1.

25 21. On January 9, 2023, The Image Direct, on behalf of Plaintiff,  
26 commercially licensed Photograph 2 to Daily Mail for the purpose of display on the  
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aforementioned online article titled “EXCLUSIVE: Go girl! Emily Ratajkowski  
continues her dating hot streak with comedian Eric Andre on intimate night out...  
after romancing Pete Davidson, Jack Greer, and DJ Orazio Rispo.”

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22. In creating Photograph 2, Plaintiff personally selected the subject  
matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used  
to capture the image.

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23. On April 7, 2023, Photograph 2 was registered by the USCO under  
Registration No. VA 2-347-193.

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24. Plaintiff created Photograph 2 for celebrity gossip and news reporting  
purposes with the intention of it being used commercially.

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25. On January 8, 2023, Plaintiff created another photograph of Emily  
Ratajkowski and Eric Andre (“*Photograph 3*”) (Photograph 1, Photograph 2 and  
Photograph 3 are referred to throughout the balance of this Complaint as the  
“*Photographs*”). A copy of Photograph 3 is attached hereto as part of Exhibit 1.

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26. On January 9, 2023, The Image Direct, on behalf of Plaintiff,  
commercially licensed Photograph 3 to Daily Mail for the purpose of display on an  
online article titled “EXCLUSIVE: Go girl! Emily Ratajkowski continues her dating  
hot streak with comedian Eric Andre on intimate night out... after romancing Pete  
Davidson, Jack Greer, and DJ Orazio Rispo.”

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27. In creating Photograph 3, Plaintiff personally selected the subject  
matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used  
to capture the image.

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28. On April 7, 2023, Photograph 3 was registered by the USCO under  
Registration No. VA 2-347-193.

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29. Plaintiff created Photograph 3 for celebrity gossip and news reporting  
purposes with the intention of it being used commercially.

**B. Defendant's Infringing Activity**

30. Defendant is the registered owner of the Website and is responsible for its content.

31. Defendant is the operator of the Website and is responsible for its content.

32. The Website is a key component of Defendant's popular commercial enterprise.

33. The Website is monetized in that it contains paid advertisements and, on information and belief, Defendant profits from these activities.

34. On or about January 10, 2023, Defendant displayed Photograph 1 on the Website as part of an online article at URL <https://www.outkick.com/supermodel-emily-ratajkowski-is-dating-who-meet-latest-beau-eric-andre/> (“*Infringement 1*”). A copy of a screengrab of the Website including Photograph 1 is attached hereto in Exhibit 2.

35. Photograph 1 was stored at URL: <https://images.outkick.com/static.outkick.com/www.outkick.com/content/uploads/2024/01/668/376/Untitled-design-33-832x1024.png?ve=1&tl=1>.

36. Without permission or authorization from Plaintiff, Defendant volitionally copied and/or displayed Plaintiff's copyright protected Photograph 1 on the Website.

37. On or about January 10, 2023, Defendant displayed Photograph 2 on the Website as part of an online article at URL <https://www.outkick.com/supermodel-emily-ratajkowski-is-dating-who-meet-latest-beau-eric-andre/> (“*Infringement 2*”). A copy of a screengrab of the Website including Photograph 2 is attached hereto in Exhibit 2.

38. Photograph 2 was stored at URL:

1 [https://images.outkick.com/static.outkick.com/www.outkick.com/content/uploads/](https://images.outkick.com/static.outkick.com/www.outkick.com/content/uploads/2024/01/668/376/Untitled-design-38-832x1024.jpg?ve=1&tl=1)  
2 [2024/01/668/376/Untitled-design-38-832x1024.jpg?ve=1&tl=1](https://images.outkick.com/static.outkick.com/www.outkick.com/content/uploads/2024/01/668/376/Untitled-design-38-832x1024.jpg?ve=1&tl=1).

3 39. Without permission or authorization from Plaintiff, Defendant  
4 volitionally copied and/or displayed Plaintiff's copyright protected Photograph 2 on  
5 the Website.

6 40. On or about January 10, 2023, Defendant displayed Photograph 3 on  
7 the Website as part of an online article at URL  
8 [https://www.outkick.com/supermodel-emily-ratajkowski-is-dating-who-meet-](https://www.outkick.com/supermodel-emily-ratajkowski-is-dating-who-meet-latest-beau-eric-andre/)  
9 [latest-beau-eric-andre/](https://www.outkick.com/supermodel-emily-ratajkowski-is-dating-who-meet-latest-beau-eric-andre/) ("*Infringement 3*"). A copy of a screengrab of the Website  
10 including Photograph 3 is attached hereto in Exhibit 2.

11 41. Photograph 3 was stored at URL:  
12 [https://images.outkick.com/static.outkick.com/www.outkick.com/content/uploads/](https://images.outkick.com/static.outkick.com/www.outkick.com/content/uploads/2024/01/668/376/Untitled-design-39-832x1024.jpg?ve=1&tl=1)  
13 [2024/01/668/376/Untitled-design-39-832x1024.jpg?ve=1&tl=1](https://images.outkick.com/static.outkick.com/www.outkick.com/content/uploads/2024/01/668/376/Untitled-design-39-832x1024.jpg?ve=1&tl=1).

14 42. Without permission or authorization from Plaintiff, Defendant  
15 volitionally copied and/or displayed Plaintiff's copyright protected Photograph 3 on  
16 the Website.

17 43. Upon information and belief, each of Plaintiff's Photographs were  
18 copied and displayed by Defendant without license or permission, thereby infringing  
19 on Plaintiff's copyrights in and to the Photographs (hereinafter the unauthorized uses  
20 set forth above are referred to as the "*Infringements*").

21 44. The Infringements each include a URL ("*Uniform Resource Locator*")  
22 for a fixed tangible medium of expression that was sufficiently permanent or stable  
23 to permit it to be communicated for a period of more than transitory duration and  
24 therefore constitutes a specific Infringements.

25 45. The Infringements are exact copies of Plaintiff's original images that  
26 were directly copied and displayed by Defendant on the Website.  
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1           46. Upon information and belief, Defendant takes an active and pervasive  
2 role in the content posted on its Website, including, but not limited to copying,  
3 posting, selecting, commenting on and/or displaying images including but not  
4 limited to Plaintiff's Photographs.

5           47. Upon information and belief, Defendant directly contributes to the  
6 content posted on the Website by, *inter alia*, directly employing reporters, authors,  
7 and editors as its agents, including but not limited to Alejandro Avila whose X  
8 profile at URL <https://twitter.com/alejandroaveela?lang=en> lists him as a longtime  
9 writer at Defendant's company (the "*Employee*").

10           48. Upon information and belief, at all material times the Employee was  
11 acting under the direction of the Defendant, within the course and scope of his  
12 employment, and in furtherance of Defendant's business when he posted the  
13 Infringements.

14           49. Upon information and belief, the Photographs were willfully and  
15 volitionally posted to the Website by Defendant.

16           50. Upon information and belief, the Infringements were not posted at the  
17 direction of a "user", as that term is defined in 17 U.S.C. §512(c).

18           51. Upon information and belief, Defendant was aware of facts or  
19 circumstances from which the determination regarding the Infringements was  
20 apparent.

21           52. Upon information and belief, Defendant is a serial infringer who cannot  
22 claim that it was not aware of the infringing activities, including the specific  
23 Infringements which form the basis of this complaint, since such a claim would  
24 amount to only willful blindness on the part of Defendant.

25           53. Upon information and belief, Defendant engaged in the Infringements  
26 knowingly and in violation of applicable United States copyright laws.  
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1           54. Upon information and belief, the Photographs are readily identifiable  
2 as copyright protected as they contain TheImageDirect.com watermark on the  
3 Photographs, thereby making Defendant's Infringements willful as a matter of law.

4           55. Upon information and belief, Defendant had complete control over and  
5 actively reviewed and monitored the content posted on the Website.

6           56. Upon information and belief, Defendant has the legal right and ability  
7 to control and limit the infringing activities on its Website and exercised and/or had  
8 the right and ability to exercise such right.

9           57. Upon information and belief, Defendant monitors the content on its  
10 Website.

11           58. Upon information and belief, Defendant has received a financial benefit  
12 directly attributable to the Infringements.

13           59. Upon information and belief, the Infringements increased traffic to the  
14 Website and, in turn, caused Defendant to realize an increase in its revenues.

15           60. Upon information and belief, a large number of people have viewed the  
16 unlawful copies of the Photographs on the Website.

17           61. Upon information and belief, Defendant at all times had the ability to  
18 stop the reproduction and display of Plaintiff's copyrighted material.

19           62. Defendant's use of the Photographs harmed the actual market for the  
20 Photograph.

21           63. Defendant's use of the Photographs, if widespread, would harm  
22 Plaintiff's potential market for the Photograph.

23           64. On January 3, 2024, Plaintiff, via counsel, served a letter seeking to  
24 address the complaints contained herein concerning Defendant's infringement of  
25 Plaintiff's rights-protected work.

26           65. Despite Plaintiff's efforts and willingness to address Defendant's  
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1 infringing activity the parties have yet to resolve the instant matter, forcing Plaintiff  
2 to seek judicial intervention for Defendant's infringing activity.

3 66. Further, despite Plaintiff's notification to Defendant concerning its  
4 infringing activity, Defendant continues to infringe on Plaintiff's works thereby  
5 establishing the willful nature of its conduct.

6 67. As a result of Defendant's misconduct, Plaintiff has been substantially  
7 harmed.

8 **FIRST COUNT**

9 ***(Direct Copyright Infringements, 17 U.S.C. §501 et seq.)***

10 68. Plaintiff repeats and incorporates by reference the allegations contained  
11 in the preceding paragraphs, as though set forth in full herein.

12 69. The Photographs are each original, creative works in which Plaintiff  
13 owns a valid copyright.

14 70. The Photographs are properly registered with the USCO and Plaintiff  
15 has complied with all statutory formalities under the Copyright Act and under  
16 regulations published by the USCO.

17 71. Plaintiff has not granted Defendant a license or the right to use the  
18 Photographs in any manner, nor has Plaintiff assigned any of its exclusive rights in  
19 the copyright to Defendant.

20 72. Without permission or authorization from Plaintiff and in willful  
21 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and  
22 illegally copied, reproduced, distributed, adapted, and/or publicly displayed works  
23 copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its  
24 copyrights.

25 73. Defendant's reproduction of the Photographs and display of the  
26 Photographs constitutes willful copyright Infringements.

27 74. Upon information and belief, Defendant willfully infringed upon  
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1 Plaintiff's Photographs in violation of Title 17 of the U.S. Code, in that Defendant  
2 used, published, communicated, posted, publicized, and otherwise held out to the  
3 public for commercial benefit, Plaintiff's original and unique Photographs without  
4 Plaintiff's consent or authority, by using them on the Website.

5 75. As a result of Defendant's violations of Title 17 of the U.S. Code,  
6 Plaintiff is entitled to any an award of actual damages and disgorgement of all of  
7 Defendant's profits attributable to the Infringements as provided by 17 U.S.C. § 504  
8 in an amount to be proven at trial or, in the alternative, at Plaintiff's election, an  
9 award for the maximum statutory damages against each Defendant for each of the  
10 Infringements pursuant to 17 U.S.C. § 504(c).

11 76. As a result of the Defendant's violations of Title 17 of the U.S. Code,  
12 the court in its discretion may allow the recovery of full costs as well as reasonable  
13 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

14 77. As a result of Defendant's violations of Title 17 of the U.S. Code,  
15 Plaintiff is entitled to injunctive relief to prevent or restrain Infringements of his  
16 copyright pursuant to 17 U.S.C. § 502.

17 **SECOND COUNT**

18 ***(Vicarious Copyright Infringements)***

19 78. Plaintiff repeats and incorporates, as though fully set forth herein, each  
20 and every allegation contained in the preceding paragraphs, as though set forth in  
21 full herein.

22 79. Upon information and belief, at all material times hereto, Defendant  
23 had the right and ability to supervise and/or control the infringing conduct of its  
24 employees, agents, members, and/or customers, and declined to exercise the right  
25 and ability to supervise or control that infringing conduct, despite its legal right to  
26 stop or limit the directly infringing conduct as well as the practicable ability to do  
27 so.  
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1           80. For example, upon information and belief, Defendant had the practical  
2 ability to police the images on the Website when its employees edited, modified  
3 and/or interacted with the Photographs, and therefore had the right and ability to  
4 supervise and control the Infringements.

5           81. As a direct and proximate result of such refusal to exercise its right to  
6 stop or limit the infringing conduct, Defendant's members have continued to infringe  
7 upon Plaintiff's Photographs, which in turn generates profits for Defendant directly  
8 from the use of the Infringements.

9           82. Defendant enjoyed a direct financial benefit from the Infringements of  
10 its members, employees, and agents from, *inter alia*, advertising revenue from the  
11 increased traffic to its Website and from the increase in fees paid by sponsors.

12           83. Upon information and belief, Defendant enjoyed a directed financial  
13 benefit from using the appeal or “draw” of Plaintiff's Photographs to increase user  
14 traffic to the Website, thereby increasing advertising revenue.

15           84. Accordingly, Defendant is liable as a vicarious infringer since it  
16 profited from direct Infringements while declining to exercise a right to stop or limit  
17 it.

18           85. Upon information and belief, Defendant willfully vicariously infringed  
19 upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code.

20           86. As a result of Defendant's violations of Title 17 of the U.S. Code,  
21 Plaintiff is entitled to an award of actual damages and disgorgement of all of  
22 Defendant's profits attributable to the Infringements as provided by 17 U.S.C. §  
23 504(b) in an amount to be proven at trial or, in the alternative, at Plaintiff's election,  
24 an award for statutory damages against each Defendant for each work infringed  
25 pursuant to 17 U.S.C. § 504(c).

26           87. As a result of the Defendant's violations of Title 17 of the U.S. Code,  
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1 the court in its discretion may award Plaintiff the recovery of its reasonable  
2 attorney's fees and costs pursuant to 17 U.S.C. § 505.

3 88. As a result of Defendant's violations of Title 17 of the U.S. Code,  
4 Plaintiff is entitled to injunctive relief to prevent or restrain Infringements of his  
5 copyrights pursuant to 17 U.S.C. § 502.

6 **THIRD COUNT**

7 ***(Removal and/or Alteration of Copyright Management***  
8 ***Information 17 U.S.C. § 1202(b))***

9 89. Plaintiff repeats and incorporates, as though fully set forth herein, each  
10 and every allegation contained in the preceding paragraphs, as though set forth in  
11 full herein.

12 90. Plaintiff's Photographs Nos. 1 and 2, as originally published by the  
13 Daily Mail at the URL [https://www.dailymail.co.uk/tvshowbiz/article-](https://www.dailymail.co.uk/tvshowbiz/article-11615593/Emily-Ratajkowski-continues-dating-hot-streak-wraps-arm-comedian-Eric-Andre-date-night.html)  
14 [11615593/Emily-Ratajkowski-continues-dating-hot-streak-wraps-arm-comedian-](https://www.dailymail.co.uk/tvshowbiz/article-11615593/Emily-Ratajkowski-continues-dating-hot-streak-wraps-arm-comedian-Eric-Andre-date-night.html)  
15 [Eric-Andre-date-night.html](https://www.dailymail.co.uk/tvshowbiz/article-11615593/Emily-Ratajkowski-continues-dating-hot-streak-wraps-arm-comedian-Eric-Andre-date-night.html), credit TheImageDirect.com as the managing agency of  
16 the Photographs. Such credit qualifies as copyright management information  
17 ("CMI") under section 1202(c) of the DMCA, 17 U.S.C. §1202(c). True and correct  
18 copies of screengrabs of the Original Source page are attached hereto as Exhibit 3.

19 91. Defendant knowingly falsified, altered, and/or removed Photographs'  
20 CMI with intent to conceal the Infringements.

21 92. Defendant wrongly credited TMZ instead of TheImageDirect.com or  
22 Plaintiff.

23 93. Defendant distributed the Infringements without the appropriate CMI,  
24 as there was no credit provided to TheImageDirect.com or Plaintiff upon Defendant's  
25 display of the Photograph on the Website.

26 94. Upon information and belief, Defendant's distribution of containing the  
27 Photograph was done with actual knowledge that the appropriate CMI was removed  
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and/or altered without Plaintiff's permission.

95. Upon information and belief, Defendant had reasonable grounds to know that its distribution of the infringing article containing the miscredited Photographs would conceal the Infringements.

96. Upon information and belief, in addition to removing the appropriate CMI, Defendant also removed the metadata from the Photograph.

97. Defendant's conduct violates 17 U.S.C. § 1202(b).

98. Plaintiff has sustained substantial injury and monetary damages as a result of Defendant's wrongful acts as herein alleged, and as a result of being involuntarily associated with Defendant, in an amount to be proven at trial.

99. As a result of Defendant's violations of the DMCA, pursuant to 17 U.S.C. § 1203(c)(2), Plaintiff is entitled to an award of the actual damages suffered as a result of the violation including any profits of the Defendant attributable to the violation or, alternatively, Plaintiff may elect to recover from Defendant statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202(b).

100. As a result of the Defendant's violations of the DMCA, the court in its discretion may allow the recovery of reasonable attorney's fees and full costs pursuant to 17 U.S.C. § 1203(b)(4) and (5) from Defendant.

### **JURY DEMAND**

101. Plaintiff hereby demands a trial of this action by jury.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that the Court enters a judgment finding that Defendant has infringed Plaintiff's copyright interest in and to the Photographs by copying and displaying it without a license or consent in violation of 17 U.S.C. §501 *et seq.*, and has violated the DMCA under 17 U.S.C.

§1202(b), and therefore award damages and monetary relief as follows:

- a. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the Infringements as provided by 17 U.S.C. § 504(b) in an amount to be proven at trial or, in the alternative, at Plaintiff's election, an award for statutory damages against each Defendant for each Infringements pursuant to 17 U.S.C. § 504(c), whichever is larger;
- b. for an award of actual damages or, in the alternative, statutory damages against Defendant in an amount up to \$25,000.00 for each violation of the DMCA pursuant to 17 U.S.C. § 1203(c);
- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505 and/or 17 U.S.C. §1203(b)(4) and (5);
- e. for pre-judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

DATED: March 18, 2024

**SANDERS LAW GROUP**

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